



MINUTES REGULAR MEETING
CITY COUNCIL CHAMBERS
448 E. 1st Street

Salida, Colorado

December 7, 2010

6:00 p.m.

The meeting was called to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE –

Led by Mayor Charles Rose. Mayor Rose added that today is Pearl Harbor Day. He sends his best wishes to those serving in the military.

ROLL CALL -

Present at roll call were Mayor Chuck Rose and Council Members Scott Damman, Jim McCormick, Jay Moore, Steven Stewart, and Tom Yerkey. Also present were City Administrator Jack Lewis, City Clerk Betty Schwitzer, Assistant Deputy City Clerk Jennifer Orr City, Treasurer Eileen Rogers and City Attorney Karl Hanlon. Absent is Keith Baker

CITIZEN PARTICIPATION -

Jim Miller, Salida resident, came to speak regarding two items. First he wants to thank Council for saving the gallery of the Unique. Secondly he wanted to bring to the Council's attention the first regional planning meeting, in which he attended. In his 35 years of experience he has never seen such misconduct of public process. The applicant was subjected to unreasonable conditions by the board. The people responsible for the meeting are staff from the County, City planning staff and the Chair PT Wood. He implored that Council to watch the meeting on film and to discuss it in a public meeting. That kind of behavior sets up the City and Council for a future lawsuit.

No other speakers.

SCHEDULED ITEMS

1. **Consent Agenda** (Jen Orr)
 - a. Approval of Agenda
 - b. Approval of Minutes: Nov
 - c. Approval of City Property requests: None

A motion was made by Damman to amend the agenda in order to add the executive session and to combine and approve the items on the consent agenda. The motion was seconded by Moore. With all in consensus, THE MOTION CARRIED.

2. **Milk Run Trail Grant Resolution** – A resolution of the City Council of the City of Salida,

Colorado, authorizing the Mayor to enter into an agreement with the State of Colorado for the Milk Run Trail grant award in the amount of \$156,400.

Community Development Director Dara MacDonald presented written materials included in the packet. The request is to approve the grant agreement with the State of Colorado for construction of the Milk Run Trail.

In October, 2008 the City applied for funding assistance to extend the Monarch Spur Trail to the Starbuck Dairy Subdivision, WalMart and the intersection of CR 111 and US Hwy 50. The land for this trail extension was supplied as part of the Starbuck Dairy Planned Development and through easement agreements with WalMart. An agreement with Checker Auto is still pending.

Although the grant was awarded by the State of Colorado in July 2009, the grant agreement was not received until October 2010. This delay was due in large part to the award of federal funds for the project. Because funding is being supplied through Land and Water Conservation Funds, the grant had to be reviewed and approved by the National Park Service and wait for those funds to be approved prior to entering into the contract with the State of Colorado.

The total project cost is \$323,655 including the value of the donated land from Walt Harder and Wal Mart (\$77,875). The State of Colorado will supply up to \$156,400 and the balance will be supplied through cash and in-kind work. The City has included \$54,925 in the 2011 budget for the project including the original grant match and an additional \$15,000 for additional engineering if needed. In addition, the City will supply some in-kind work through the Public Works Department and Chaffee County will supply CL6 base materials from their gravel pit.

An email from Jay Montgomery, the City's water attorney, dated December 7th was passed out. Ms. MacDonald explained that the land was dedicated to the City and the City has the right to use it, as long as the City allows ditch owners access to the ditch. There is a four foot wide concrete ditch between from Walmart and the trail. The trail crosses the ditch where the ditch is underground. There is no crossing where the ditch is above ground. There are two ditch owners that claim they have an agreement to maintain their ditch. Mr. Montgomery says that it is not exclusive and the City can use the land as long as it doesn't interfere. According to Ms. MacDonald, the work to build the trail would not alter the ditch.

Councilor Moore asked how far apart the trail is from the ditch. MacDonald answered 10 feet. She explained that the City owns a 25 foot strip, so there is some flexibility as to where it goes. Moore asked how long does it the ditch parallel the proposed path. MacDonald answered that it is several hundred feet.

Ms. MacDonald noted that Ms. Foster is here, she is a ditch owner in this specific area. Ms. Jean Foster came to the podium to speak. She is one of the owners of South Ark ditch that runs 1320 feet behind Walmart. She believes the City and the ditch owners came to agreement that 25 feet of trail encompassed 20 feet of the ditch. It is her understanding that there is no separation; the trail encompasses all of the ditch easement. She believes that the agreement died and she has concerns about this and would like something in writing. She said that the rights of the ditch owners are protected by the Colorado constitution; the rail would run along the right of way and would not allow the owners to do maintenance. She believes that the trail is supposed to be fenced, which would make it difficult for owners to get beyond the ditch. The trail could be damaged when

bringing in equipment to fix the ditch. A fall from a citizen into the concrete ditch could cause liability to the ditch owners. In the past the courts have found ditch owners liable. Ms. Foster proposed that a fence be constricted behind Walmart securing access to the ditch and relocate the trail along the northerly fence line. She invites further discussion.

Attorney Hanlon clarified that this is a prescriptive easement, so no particular width is defined for the ditch owners. The City has to provide "sufficient" space to maintain the waterworks. As to the liability and fencing, that can be decided in the final design.

Yerkey made motion to approve Resolution 2010-70 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE STATE OF COLORADO FOR THE MILK RUN TRAIL GRANT AWARD IN THE AMOUNT OF \$156,400. The motion was seconded by Damman.

Discussion followed.

With all in consensus, THE MOTION CARRIED.

3. Vacation of lot lines at the High School and Middle School – 2nd reading

Ordinance 2010- 19 approving the vacation of lot lines within the property owned by the R-32-J School District.

MacDonald presented written materials in the packet. No changes since first reading. The request is to approve dissolution of interior lots within the Salida High School, Middle School and Early Childhood Center campus.

The Salida School District has requested the City's assistance with clearing up some outstanding issues on their property where the high school, middle school and early childhood center are located. There are several alleys and streets that were platted through what is now the school campus and these should be abandoned in order to clear up the title and allow construction of the new high school.

City staff recommends that the interior lot lines within the school campus be eliminated. Without dissolution the school district, or a future owner, could sell off one or more of the existing platted lots without ensuring that adequate services and access are available to serve that lot. Through abandonment of the various alleys and streets within the campus, the City has foregone the obvious locations for infrastructure installation which could leave these existing platted lots without access to utilities. For this reason, staff has recommended dissolution of the interior lot lines. If, in the future, the owner of the property wishes to sell off some portion of the campus they would need to go through the subdivision process to ensure that the area to be separated from the campus could be served with adequate utilizes and access.

The blocks with lot lines proposed for dissolution are highlighted in red on the attached exhibit. Included are the following:

Block 98, Haskells Addition

Block 110, Haskells Addition
Block 6, Roberd's 2nd Addition
Block 7, Roberd's 2nd Addition
Block 8, Roberd's 2nd Addition
Block 19, Roberd's 2nd Addition
Block 20, Roberd's 2nd Addition

Section 16-14-110(5) of the Salida Municipal Code has two applicable provisions to consider when vacating platted lot lines:

c. Comprehensive Plan. A subdivision plat, public right-of-way or dedicated easement may be vacated if the vacation would be consistent with or implements the applicable intent statements, specific directions and recommended actions of the Comprehensive Plan.

d. Transfers or sales of lots. A subdivision plat may be vacated if none of its lots have been sold or transferred; or, if there have been sales or transfers, then if there has been no development on any lots in the subdivision and all of the owners agree to the vacation of the plat.

Staff has found that both of these review standards have been satisfied. The Comprehensive Plan identifies this area of the City as 'Educational' in the land use plan and dissolution of the lot lines within the school campus is consistent with maintaining this area for educational uses. The school district owns all of the subject lots and has constructed buildings and facilities over many of the lines.

The City Council approved this ordinance on first reading during the November 16, 2010 meeting.

In the future the sewer lines will go under where they will put the track. McCormick asked if it was adequate for the infusion. MacDonald answered yes.

Mayor Rose opened the Public Hearing. No speakers. Mayor Rose closed the public hearing.

A motion was made by Damman to approve Ordinance 2010-19, AN ORDINANCE OF THE CITY OF SALIDA, COLORADO, APPROVING THE DISSOLUTION OF CERTAIN LOT LINES WITHIN THE CITY IN THE VICINITY OF AND UNDERLYING PROPERTY OWNED BY THE R-32-J SCHOOL DISTRICT., AND ORDERING THE ORDINANCE PUBLISHED BY TITLE ONLY. The motion was seconded by Moore. With a voice vote, it was unanimous and passes.

4. Amending the 2010 Budget – (Jan Schmidt)

Resolution 2010-73 amending and supplementing Resolutions No. 2009-54 adopting the 2010 budget to provide for supplemental expenditures and revenues and Resolution No. 2010-31 making certain revisions to the 2010 budget.

Finance Director Jan Schmidt presented written materials included in the packet. Council adopted the 2010 budget on November 3, 2009 and amended certain sections on May 18, 2010. Since that time, a few other changes have arisen and we are requesting council to approve the budgetary impact of these items detailed in the attached resolution. The council may approve this request as proposed

or modify it by adding or striking line items in the resolution.

The net effect of the changes is a positive \$387,000. As a result of better sales tax collections than expected this spring, as well as the deferral of some capital projects (and associated grant revenue), the City now expects to increase general reserves in 2010.

Mayor Rose mentioned that item G is important to Baker. Rose recommends continuing that section until the next meeting when Baker can be here.

A motion was made by Yerkey to adopt resolution 2010-73 RESOLUTION AMENDING AND SUPPLEMENTING RESOLUTION NO. 2009-54 ADOPTING THE 2010 BUDGET TO PROVIDE FOR SUPPLEMENTAL EXPENDITURES AND REVENUES WHILE MODIFYING SECTION G SO THAT IT ENDS AFTER REVENUE AND DOES NOT INCLUDE APPROPRIATING THE FUND. The motion was seconded by Moore.

Discussion followed.

Rose thanked Schmidt for making this understandable. Council can make better decisions based on real numbers. We need to do the planning for 2012 so that we can look beyond our nose.

Motion passes.

5. Wastewater Treatment Plant Interim Financing – final loan documents-1st reading

Ordinance 2010-20 authorizing the execution and delivery of a loan agreement and note by the City of Salida, Colorado, acting by and through its Water Activity Enterprise, to Compass Mortgage Corporation, such note to be in a principal amount not exceeding \$12,500,000, for the purpose of financing extensions and improvements to the sewer system operated by such enterprise; providing for application of the net revenue of the water and sewer systems of the city to the payment of the principal of and interest on such note and providing other details in connection therewith; and declaring an emergency.

Finance Director Jan Schmidt presented written material included in the packet. The request is to approve another ordinance related to the interim financing of the wastewater treatment plant with updated terms and the final loan document, which was not available at the time the original ordinance was approved.

Council was asked to approve an ordinance for the interim in September, which was earlier than we would have normally sought this action. This was due to the potential that Proposition 101 might have passed in November and we would have needed to fast track the closing into 2010.

The City has now selected BBVA Compass as the interim lender under the USDA / Rural Development program through a competitive process. Although the terms and conditions are not significantly different, we would like council to review and approve the final documents. We are asking council to pass this ordinance as an emergency due to the timeframe for locking in interest rates, terms and completing the closing.

The original vote was done earlier because of the possible passage of Colorado Amendment 61. That amendment failed. Compass was selected as the lender. The terms and conditions are not that different from what was originally passed, but Ms. Schmidt still wants Council to pass this new Ordinance. Emergency ordinance to do before end of the year so that can get started on the project.

Attorney Hanlon explained the process of an Emergency ordinance for a statutory city; the only thing different is the effective date. It will be effective after the 2nd reading, rather than 30 days later.

Damman made a motion to approve Ordinance 2010-20, an ordinance of the City of Salida, Colorado, authorizing the execution and delivery of a loan agreement and note by the City of Salida, Colorado, acting by and through its Water Activity Enterprise, to Compass Mortgage Corporation, such note to be in a principal amount not exceeding \$12,500,000, for the purpose of financing extensions and improvements to the sewer system operated by such enterprise; providing for application of the net revenue of the water and sewer systems of the City to the payment of the principal of and interest on such note and providing other details in connection therewith; and declaring an emergency. The motion was seconded by Moore. With all in consensus, THE MOTION CARRIED.

6. Community Support Funding- Supplement to 2011 Budget

Finance Director Jan Schmidt presented written materials included in the packet. She is requesting a decision from the council regarding community support funding requests submitted by various organizations as part of the budget process.

In September, as part of the proposed budget review package, Council was provided with copies of community support requests for 10 different projects. Council was also provided a "Project Prioritization Evaluation Form" and the "Projects Priority Criteria" form with guidance for scoring the requests.

We discussed these requests during one of the first budget work sessions. Ms. Schmidt kept track of the level of support council members expressed for the various requests. That summary was provided to Council in October with a request for your feedback so that staff could notify each applicant of your decisions.

The original submissions requested \$66,550 in funding toward projects that totaled just over \$1.2 million. One request in the amount of \$2,750 was withdrawn. The approved 2011 budget reserved \$35,000 in funding for these types of projects. Those funds may be allocated to the requests currently before Council, kept in reserve for future requests, or returned to general reserves if left unused.

At this time, neither staff nor the funding applicants have received final decisions with regard to whether or not specific requests were approved for funding. There are nine different requests in front of you. Ms. Schmidt created the chart in order to clarify how the money could be allocated.

Donna Rhoades, Andrew Mackey, Mike Segasky and Yvonne Barnes came to promote SPOT's funding request. Their next project is for the Ark Hills open space 30 acre parcel. SPOT will plan and build the trails.

Mayor Rose asked SPOT representatives if they were present to ask for money. Ms. Rhoades responded that they are asking for \$6000, which would cover the costs to pay the conservation core to do the trail building. The other \$3000 would be used for the Backbone trail for mapping and printing of a brochure of the trail system.

Damman made a motion to provide or withhold funding for each of the requests on the attached list with such funds to be allocated from the amount previously appropriated in the 2011 budget. The motion was seconded by Stewart.

Discussion followed. Mayor Rose noted that the motion does not include the request to fund SPOT.

Moore proposed an amendment to the motion to include SPOT's two projects for a total of \$9,000. The motion was seconded by Stewart.

More discussion followed.

Yerkey proposed an amendment to the amendment to fund SPOT for a total of \$6,000. The motion was seconded by Stewart. Voting Yea were Yerkey, Stewart, Moore and McCormick. Voting Nay was Damman. THE MOTION CARRIED.

For the first amendment to the motion, which was amended to include \$6,000 for SPOT, voting Yea were McCormick, Yerkey, Moore, and Stewart. Voting Nay was Damman. THE MOTION CARRIED.

Voting on the main motion, which was amended with an amendment to the amendment to the motion, added \$6000 for SPOT was all in consensus, THE MOTION CARRIED.

7. Administrator/City Attorney/Deputy City Clerk

1. Administrator Report

Mr. Lewis said that there is a signed contract for the old Council Chamber building. It went under contract a few weeks ago for \$140,000. The City will accept a full price contract or a contract at the appraised value. He is waiting for the appraisal to come through in order to finish the transaction. Mr. Lewis asked Council for concurrence on the price of \$140,000 or higher in a contract with Leslie Walker.

Secondly, Administrator Lewis said that Chaffee County's transportation board is looking for members. That is an invitation to Council to be a part of the board. There is a lot of planning needed on surface transportation. There were no volunteers.

Thirdly, there has been a complaint lodged against a police officer. The complaint is being investigated by the Colorado Bureau of Investigation (CBI). The employee has been put on administrative leave. Mr. Lewis will keep Council up to date. Mayor Rose asked for clarification about administrative leave. Mr. Lewis answered that it is paid time off.

Lastly, Administrator Lewis gave an update on the Unique Theatre. The owner has applied to the

State of Colorado to apply for a demolition permit for the back half of the building. At first look of the demolition plan, the engineers say it could be feasible. Mr. Lewis pointed out that a certified engineer will need to make those plans and apply in the appropriate way. As of this afternoon, Mr. Lewis instructed the City's contractor to pull off of the job. There are other issues that will be covered in executive session.

Councilor Yerkey asked Attorney Hanlon, if the City could stop the demolition in order to safeguard the public. Mr. Hanlon answered that if the work from the owner accomplishes the goal of abating the dangerous situation, the City could not and should not do anything to stop them. It is private property, so there isn't anything we can do if the owner can provide an engineer's certificate on the set of plans to correct the unsafe conditions.

2. City Attorney Report – Karp, Neu, Hanlon, PC

Karl Hanlon had two things to bring up. First is the update on the Quizno's bike race. It looks like contract will be approved in January. There is a symposium on Monday to discuss the event. He has monitored the contract through a group.

Secondly Council needs to make a decision about the Medical Marijuana Dispensaries issue. It has been 6 months so now it is time to adopt regulations. This is an important issue to Councilor Baker, so we may need to wait to discuss this. Damman asked that Council wait until the 21st meeting. Hanlon says that we can wait. Staff will bring it up on the 21st. Hanlon wants something decided soon so that the City can be ready with ballot questions. The election cycle is 60-90 days. In summary, Hanlon advised Council not to take too long; he would like direction at the meeting on the 21st of December.

Damman pointed out that the meeting on the 21st is 4 days before a major holiday. He wants to make sure there will be a quorum. After discussion it appears that there will be enough Council members in attendance. Hanlon will not attend in person; he plans to use skype for the work session. Council can opt out of having these Medical Marijuana establishments via a vote of the citizens or Council could make the decision to regulate locally or to have the state regulate the dispensaries in our community.

Mayor Rose announced to the audience that he would like the community to let council members know if they want to take this to a vote.

c. Assistant Deputy City Clerk Report – Jennifer Orr
Nothing to report.

Elected Official Reports

a. Treasurer-

Eileen Rogers had nothing to report this evening.

b. Mayor –

Mayor Rose reminded everyone that it is Pearl Harbor Day. He thanked those in uniform.

c. City Council-

Nothing to add.

EXECUTIVE SESSION

A motion was made by Damman to go into Executive Session for discussion of a personnel matter under C.R.S. Section 24-6-402(2)(f) and not involving: and specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees. AND THE FOLLOWING ADDITIONAL DETAILS ARE PROVIDED FOR IDENTIFICATION PURPOSES: Unique Theater. The motion was seconded by Moore. With all in consensus, THE MOTION CARRIED.

Mayor Rose announced the time as 7:50 p.m.

Those present during the executive session were Mayor Chuck Rose and Council Members Jim McCormick, Jay Moore, Tom Yerkey and Steven Stewart. Also present were City Administrator Jack Lewis and City Attorney Karl Hanlon.

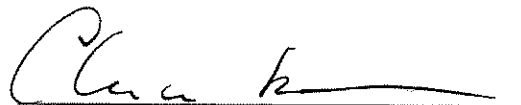
At 8:10 Scott Damman recused himself.

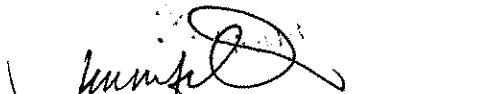
Executive Session concluded at 8:48 p.m. No decisions were made.

ADJOURNMENT –

A motion was made by Moore to adjourn the meeting at 8:49 p.m. The motion was seconded by Yerkey. With all in consensus, THE MOTION CARRIED.


[SEAL]


Mayor


Assistant Deputy City Clerk

Respectfully submitted by Jennifer Orr, Assistant Deputy City Clerk